



An
Bord
Pleanála

Inspector's Report PL61.246946

Development

Retention of existing elevations and basement of dwelling house including associated services on revised site boundaries at Arch House, Maunsells Road, Galway.

Planning Authority

Galway City Council

P. A. Reg. Ref.

15/323

Applicant

Desmond and Ann Mackey.

Decision

Grant Permission for Retention.

Third Party Appellant

Michael Gibbons,

First Party Appellant

Desmond and Ann Mackey.

Date of Site Inspection

16th September, 2016

Inspector

Jane Dennehy

1 **Site Location**

- 1.1 The site has a stated area of 880 square metres and access off the Shantalla Road to the north and from Maunsells Road to the west and is that of a nineteenth century detached house which is in use as a single dwelling. The current owners, the applicants' family have carried out extensive internal and external renovation and upgrade works to the house which has a total stated floor area of 360 square metres. To the south the dwelling opens onto gardens leading to the access onto Maunsells Road to the west and to the north the dwelling opens onto a laneway which extends to access onto Shantalla Road. Fort Eyre, the appellant party's property is opposite the applicant's dwelling, facing onto Shantalla Road and on the north side of the private lane. Works were taking place at this property at the time of inspection.
- 1.2 The interior of the house has been extensively upgraded, fitted out and furnished. It includes a mezzanine level used as habitable accommodation. The basement has been subject to extensive works and is fitted out for use as a luxury bathroom. A small space off it is in use as a studio.

2 **The Proposed Development**

- 2.1 The application lodged with the planning authority on 19th November, 2015, supplemented by the further information lodged on 12th May, 2016 indicates proposals for permission for retention of:

A basement access hatch on the lane on the northern side.

Canopies erected above entrances on north elevation.

A basement level space providing for storage, bathroom accommodation but which is not used for habitable purposes.

changes to elevations which include a glazed section, a flue and entrance and an upper level window, minor boundary revisions and associated services.

- 2.2 The submissions made in connection with the application include a structural report in which it is indicated that the basement, which is undamaged, is within the footprint of a subterranean room, in which there was a well that was uncovered from filled space during excavation and renovation works some years ago.

3 **Planning Authority Decision**

3.1 **Decision**

By order dated, 28th June, 2016 the planning authority decided to issue a split decision. It decided to grant permission for the retention of the basement and existing elevations subject to three conditions of a standard nature.

It decided to refuse permission for the retention of the basement access hatch and the canopies over the entrances on the basis of two reasons. They are:

Insufficient evidence of legal interest for retention of the basement access hatch.

Visual obtrusiveness and detracting from existing character by the two canopies on the northern elevation.

4 **Planning History**

- 4.1 According to the planning officer report the appeal site has the following planning history:

P. A. Reg. Ref. 99/602: Permission was granted for alterations and extensions to the existing house. (Details are not available.)

P. A. Reg. Ref. 87/33: Permission was granted for the conversion of a store to a house. (Details are not available.)

5 **Development Plan**

The operative development plan is the Galway City Development Plan 2011-2017 according to which the appeal site and environs are subject to zoning objective: R;

“To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.”

6. **The Appeals**

6.1 **The First Party Appeal.**

An appeal was received from O’Tuairisg Associates of behalf of the applicant on 20th July, 2016 attached to which are several appendices including photographs, a statement by the applicants, CCTV report (on sewer in the lane), Land registry documentation, a certificate from solicitor, confirmation of date of installation the canopies. According to the appeal:

- The documentation enclosed indicates sole ownership by the applicants of the private laneway in which the canopies and basement access hatch are located. The applicants therefore have sufficient legal interest to justify a grant of permission for retention of the canopies and the access hatch.
- The basement access hatch has been in existence since circa 2001/2002 in the laneway on the north side of Arche House. It protects excavation in the laneway, can be used as a fire escape, is solely for access to the basement, especially for larger items for storage purposes but it is infrequently used. The hatch is 1840 mm wide x 900 mm wide,

is flush with the ground, can with stand heavy loads on or across it, does not hinder or impede third party rights over the lane and is not visible from Shantalla Road.

- The canopies have been erected since 2007 over the entrance doors off the laneway. They are retractable and less than 600 mm over the laneway and do not obstruct persons or vehicles and are visible only from the laneway which is in the private ownership of the applicants. The laneway is used as a garden by the applicants as an amenity area for the dwelling.

6.2 The Third Party Appeal

An appeal on behalf of Michael Gibbons of Fort Eyre House was received from Mulcaire Heffernan Ltd., on 19th July, 2016. According to the appeal Mr Gibbons has four concerns which are outlined in brief below:

- It is not credible and there is no evidence, (such as a valid commencement notice with the construction date) that the works to the dwelling took place more than seven years ago, and are therefore exempt as per *Class 1-13 of Schedule 2 Part 1 of the Planning and Development Regulations, 2001*. (PDR) Surface patination is indicative of recent activity is present. The commencement notice if issued provides for confirmation that the works are compliant which would reassure adjoining property owners.
- Drawing No 1 does not indicate the extent of the basement works. Excavation and the hatch encroachment on the service laneway rendering the application potentially invalid as the information provided is incorrect.
- The existing development is 66 m sq larger than indicated. The retention area is 107 m sq and the extra site area is due to inclusion of the access

from Maunsells Road which was excluded under P. A. Reg. Ref. 99/602 for which the site area was stated to be 515 square metres reflecting usable curtilage rendering the information misleading and the application invalid

- There is sub structural encroachment into the laneway preventing rightful and full use for access over it to the adjoining properties which has been historically established. The applicant himself has acknowledged that the lane is not a private amenity area. The public sewer in the laneway has been proven to have been damaged and this may be consistent with unauthorised sub structural excavation works. A grant of permission would be prejudicial to access, safety and services for adjacent properties.
- The building has historic merit itself and is adjacent to a protected structure. The two and a half storey glazed window, and industrial hatch are unsympathetic to the structure and the environs, set poor precedent and are contrary to the development plan heritage policies and those of the statutory guidelines and should be removed.
- The Board should require the Building Control Authority to investigate and seek documentary evidence as to compliance with TGD B 4.1 and 4.2 for the north elevation window.
- Adjacent property owners have been denied scope for legitimate objection and there is restricted scope for certification and for assessment of compliance by prescribed bodies are prevented from assessment of compliance such as Fire Safety and Building Control Regulations especially TGD Parts A, H and J.
- It is requested that the Board require the planning authority to take unauthorised development proceedings under s 152 of the Act and to either invalidate the application or refuse permission in entirety.

6.3 Observations of the Planning Authority

A submission was received from the planning authority on 18th August, 2016.

With regard to the first party appeal it is stated that that Indenture of Conveyance provide in connection with the appeals provides confirmation of the sole ownership of the laneway applicants and:

- right of pedestrian access to 58 Shantalla Road,
- right of access for Nos. 57 and 58 Shantalla Road for repair and maintenance including sewers when a maintenance vehicle requires access in connection with repairs subject to forty-eight hours' notice.
- right of conduit under the lane for a sewer line and a right of pedestrian and fire and emergency access in emergencies.
- right to a security camera at the gate of No 57 and no 58 with entitlement to maintain the cameras and security system.
- Given that ownership and rights of way issues have been confirmed in the details of a Court order (10 March, 2016) which were not made available at application stage the planning authority no longer having objection to the canopies given the private ownership of the lane which is not open to views from public roads.
- The planning authority is satisfied with the proposed retention of the basement in respect of which sufficient information was made available at application stage and the clarification regarding ownership issues relating to the lane.
- The planning authority is also satisfied with the works to the elevations proposed in the application.

- Outstanding matters, if any between the parties relating to title and rights of way can be resolved by recourse to Courts.

6.4 Response to the Appeal by the Applicant/First Party.

A submission was received from the applicant's agent, on 5th August, 2016 attached to which are several appendices. According to the submission:

- The double height window was installed in 2006. (Correspondence in appendix A refers). The wall surface looks recent due to high lime content. (Photo in appendix B refers.)
- The basement hatch does not hinder rights of way, is in the lane in the applicant's ownership and has been in existence circa fourteen years. The information and the case made in the application and appeal are reiterated.
- The sewer in the lane services several properties including the appellant property in Fort Eyre. There is no proof in the CCTV survey that damage is attributable to works at the applicant's property. The sewer was replaced and upgraded under P.A. Reg. Ref. 14/177. The issues in the CCTV survey are indicative of pipework in existence for several decades. Clay pipes vitrify over time due to settlement of ground and pipe bedding. (CCTV report and analysis are in Appendix 1)
- The total gross floor area of the buildings is 360 square metres. The area to be retained is the basement floor area of 41 square metres and this area is included in the total gross floor area and this area has little impact. The mezzanine is in the vaulted ceiling of the kitchen and is used for access to the tower and the tower and mezzanine have a total floor area of 24.5 square metres. With the exception of the basement area the total floor area has not been increased beyond that permitted under P. A.

Reg. Ref 99/602. The inclusion of the Maunsells Road access increases the total site area from 515 to 888 square metres. The dwelling has not been significantly enlarged.

- Works carried out to the façade facing the laneway are sympathetic to the original features uncovered by the owners. The suggestion that the hatch is “industrial is totally misleading. No commercial activity takes place at Arche House. Structural stability of the basement has been addressed. Based on visual inspection it is in good structural condition (Information is available in Appendix H)
- Waste water discharge to the upgraded sewer constructed under P. A. Ref. Ref. 14/117. The sewer is not yet fully loaded, some capacity remaining in unoccupied units in the Fort Eyre development. There were no issues prior to and after installation of the sewer.
- The flue from the boiler as shown on the application discharge on to the laneway and does not discharge onto third party property.
- The dwelling must comply with the Building Regulations applicable at time of construction and all works subject of the application were completed ten years ago in accordance with the TGD and Building Regulations. at the time of construction.

6.5 Further submission of the Third Party Appellant.

A submission s received from the appellant’s agent on 15th August, 2016 according to which the appellant’s concerns are not adequately addressed and are exacerbated.

- Ownership/title and associated rights of way issues are serious unresolved concerns.

- The development is not in accordance with Chapter 7 development plan or architectural heritage protection guidelines and there is no explanation or confirmation to support the architectural interventions, the building being adjacent to a protected structure. The 2.5 storey glazed window is particularly objectionable. Inappropriate materials have been used on the façade, namely the canopies and metalwork brackets and use of inappropriate methods and lack of reversibility. Remarks previously made about the hatch are reiterated.
- It is not accepted that the lane is a private amenity area it having been described as a small service lane in the application under P. A. Reg. Ref 99/602. The photographs provided by the applicant which are historical are erroneous as regards establishing that lane is a garden. Third parties have had difficulty in exercising their rights of access and details are available if required. There is no grant of permission for use of the laneway as a private garden. The basement encroaches onto the lane and the damage to the sewer is consistent with sub structural excavations.
- There is no evidence of compliance with Building Regulations.
- It is requested that the permission be refused outright for the proposed development.

6.6 **Final Submission of the Applicant/First Party.**

A submission was received from the applicant's agent on 8th September, 2016 according to which:

- Sufficient information was submitted to the planning authority and it has acknowledged that the Indenture of Conveyance was not taken into account in reaching the decision.

- The planning authority also acknowledges that the basement hatch and canopies can be accepted as the reasons for the decision to refuse permission are now redundant.

Matters regarding refunds of costs, acknowledgement of errors etc. are also referred to in the submission.

7. Final Submission of the Third Party Appellant.

- 7.1 A submission was received from the appellant's agent on 9th September, 2016 attached to which is a written statement by the appellant's solicitor, a written statement by the applicant's surveyor and a copy of a letter from Ruth Mackay, daughter of the applicants to June Smith enquiring about title.
- 7.2 According to the submission the concerns of the appellant have not been addressed or ameliorated and the information submitted on behalf of the applicant is erroneous and matters of ownership and rights of way should not be considered superfluous to the appeal.
- 7.3 According to the statement by the appellant's solicitor, the appellant sought to purchase the laneway but investigations as to Title held June Smith were inconclusive and it is contended that ownership of the laneway has never been established.
- 7.4 According to the statement by the appellant's surveyor the laneway is on Unregistered Title and serves as a right of way which also contains sewers and service ducts. None of the Deeds of the properties on the laneway confirm outright ownership of the laneway and some mention a "Right of Way. It is concluded that the Title of the Vendor is questionable and correspondingly, the outright ownership of the applicants is questionable because clear unambiguous Title cannot be claimed.

8. Assessment

- 8.1 Central to the issues in dispute between the applicant/first party appellant and the third party are matters relating to Title and Rights of access. On review of the documentation provided in connection with the application and the additional documentation provided in connection with the appeal by the parties, it could be assumed that the applicant is the sole owner of the dwelling and the laneway but that there are rights of access across it and under it in relation to services for third party properties adjacent to the lane which include the third party appellant's property. However, the case made as to difficulty with establishment of prior Title as submitted on behalf of the appellant is noted and it is acknowledged that the matter may be unresolved. Unresolved matters between the parties can be addressed through the legal system resolution of such matters being outside the planning remit provided for in the Act Section 37 (13) of the Act refers and the scope of the Board.
- 8.2 Similarly, it is outside the remit of An Bord Pleanála to instruct a planning authority to address matters relating to compliance with Building Regulations, conditions attached to grants of planning permission, primary legislation or statutory guidance. It is also considered that the applicant has satisfactorily demonstrated structural stability further to any excavation works carried out in connection with the basement and no material impact on the sewer in the lane.
- 8.3 The planning issues that can be identified are that of architectural heritage impact, having regard to historic fabric in of Arche House itself and adjacent protected structures and, as to impact on residential and visual amenity having regard to the use of the laneway as an amenity space serving Arche House. These considerations are addressed below in the assessment of the various elements of the proposed development.
- 8.3 The existing building is not included on the record of protected structures but it clearly apparent that the location is an area of archaeological and architectural

heritage merit and significance. Based on the walk through inspection and the information provided with the application and the appeal the extent and impact of the excavations and interventions to fabric works proposed for permission for retention cannot be fully established although the works are sufficiently indicated and described. It is noted that the planning authority has indicated no concern in this regard although no specialist internal or prescribed body reports on architectural and archaeological heritage impacts are available.

Bearing the foregoing limitations in mind, there is no objection to the sub-surface/ basement level space that has been excavated, adapted and fitted out for use as a bathroom and small craftwork studio.

The hatch opening is covered over by steel doors which are more or less flush with the surface in the laneway and are typical of those covering subsurface storage spaces in most public places. These doors are visible only within the immediate vicinity which is within the laneway which is not in public ownership. There is no objection.

For similar reasons there is no objection to the full length window in the elevation overlooking the laneway and the canopies and ancillary fixtures and fittings to the façade projecting forward over the laneway.

The use of the laneway as amenity space is noted. This use does not interfere with or obstruct any access across the laneway by parties exercising a right of way.

In view the foregoing, taking into account the additional documentation provided in connection with the appeal, it is considered that a grant permission for retention of all the elements of the proposed development can be supported and recommended. Nevertheless, it does appear that the issue of Title and outright ownership of the laneway remains unresolved and the grant of permission for retention would be very reliant on the provisions of section 34

(13) of the Act regarding entitlement to carry out a development which is a matter which would be subject to the legal system.

7 Appropriate Assessment

8.1 Having regard to the scale and nature of the proposed development which was carried out several years ago, the retention of which is proposed no Appropriate Assessment issues arise and it is not considered that the proposed development has a significant effect individually or in combination with other plans or projects on a European site.

8 Recommendation

9.1 In view of the foregoing, it is recommended that Permission for retention be granted for the proposed development in entirety on the basis of the reasons and considerations and subject to the conditions set out in the draft order overleaf.

Decision

Grant Permission for retention on the basis of the reasons and subject to the conditions set out below.

Reasons and Considerations.

Having regard to the existing development and to the nature and extent of excavations, alterations and fixtures the retention of which is proposed, it is considered that subject to compliance with the conditions set out below, the proposed development does not adversely affect the integrity of historic fabric and is not seriously to the residential and visual amenities of the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority 12th day of May, 2016, and by An Bord Pleanála on 20th July, 2016, 5th August, 2016 and 9th September, 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.
2. The house and basement shall be jointly occupied as a single dwelling and the basement shall not be used as habitable accommodation, shall be used for purposes ancillary to the residential use of the dwelling and shall be sold or sublet except as part of the dwelling.

Reason: In the interest of clarity and residential amenity.

Note. *A person shall not be entitled solely by reason of a grant of permission to carry out a development as provided for under. Section 34 (13) of the Planning and Development Act, 2000-2015.*

Jane Dennehy
Senior Planning Inspector
20th September, 2016